

STATE OF MICHIGAN
COURT OF APPEALS

CHARTER TOWNSHIP OF CHOCOLAY ,

Plaintiff-Appellee,

v

DEPARTMENT OF NATURAL RESOURCES,

Defendant-Appellant.

UNPUBLISHED

October 28, 2003

No. 246171

Marquette Circuit Court

LC No. 02-040147-CZ

Before: Meter, P.J., and Saad and Schuette, JJ.

PER CURIAM.

Defendant Michigan Department of Natural Resources (DNR) appeals as of right the final order granting plaintiff Charter Township of Chocolay's motion for an injunction. We reverse.

Defendant's sole issue on appeal is that the trial court erred in granting a preliminary injunction to plaintiff because under the snowmobiles act, MCL 324.82101, *et seq.*, defendant is not subject to a local zoning ordinance that prohibits the operation of snowmobiles on certain state land. We agree. We review de novo a trial court's ruling on a motion for summary disposition brought under MCR 2.116(C)(10). *UAW-GM v KSL Recreation Corp*, 228 Mich App 486, 490; 579 NW2d 411 (1998). Further, the proper interpretation of a statute is a question of law subject to de novo review. See *Pittsfield Charter Twp v Washtenaw Co*, 468 Mich 702, 707; 664 NW2d 193 (2003).

Under MCR 2.116(C)(10), a party may move for dismissal of all or part of a claim based on the assertion that there is no genuine issue with respect to any material fact and the moving party is entitled to judgment or partial judgment as a matter of law. *Universal Underwriters Group v Allstate Ins Co*, 246 Mich App 713, 720; 635 NW2d 52 (2001). When reviewing the motion, the court must consider the affidavits, pleadings, depositions, admissions, and other documentary evidence in the light most favorable to the nonmoving party. *Id.*

Our Supreme Court stated in *Dearden v City of Detroit*, 403 Mich 257, 264; 269 NW2d 139 (1978), that "the legislative intent, where it can be discerned, is the test for determining whether a governmental unit is immune from the provisions of local zoning ordinances." The Court later expanded on this by stating that "particular talismanic words" are not required to indicate the Legislature's intent. *Burt Twp v Dep't of Natural Resources*, 459 Mich 659, 669; 593 NW2d 534 (1999). It is the Court's task to discern the legislative intent from "[w]hatever

terms are actually employed.” *Id.* In *Pittsfield Twp, supra* at 710, the Court reiterated its guidance from *Burt Twp* by stating that “there are no special words, the absence of which engenders a specific outcome.” With this in mind, this Court is asked to resolve a conflict between the authority of the DNR over the creation of snowmobile trails under the snowmobiles act, MCL 324.82101, *et seq.*, and the township’s authority to regulate the use of lands within its territory under the Township Zoning Act (TZA), MCL 125.271 *et seq.*, and the township planning act (TPA), MCL 125.321 *et seq.*

It is undisputed that townships have broad authority to regulate their territories through the use of zoning ordinances. See *Burt Twp, supra* at 665-666, and *Pittsfield Twp, supra* at 707-708. Under the TZA and TPA, this includes regulating and planning for places of recreation. See MCL 125.271(1), MCL 125.273, MCL 125.322, and MCL 125.327(a). Like the zoning enabling act in *Dearden, supra* at 265, neither the TZA nor the TPA “disclose what effect, if any, a zoning ordinance should have on state agencies.” We refuse to find that the general authority regarding “recreation” rises to the same level of intended control over snowmobile trails as was found in *Burt Twp, supra* at 666, regarding control over water-front development. See, e.g., *Pittsfield Twp, supra* at 714-715.

Turning to the section of the snowmobiles act, MCL 324.82124, that defendant asserts is controlling, we agree with the parties that this provision does not set forth the same clear expression of legislative intent as was seen in *Dearden*. In light of this, defendant argues that “[c]ourts should proceed from a presumption of the State’s immunity from local ordinance in cases where legislative intent is not discernable.” However, our Supreme Court has characterized this issue “as one, not of absolute governmental immunity, but rather of legislative intent,” *Dearden, supra* at 265, and defendant’s argument essentially has been previously rejected. See *Burt Twp, supra* at 666 n 8. Under the *Dearden* test, we must therefore look “to the legislative intent for the particular situation, rather than a set rule favoring either the agency or the municipality.” *Capital Region Airport Authority v DeWitt Charter Twp*, 236 Mich App 576, 583; 601 NW2d 141 (1999).

MCL 324.82124(1) states:

Any municipality may pass an ordinance regulating the operation of snowmobiles if the ordinance meets substantially the minimum requirements of this part. A local unit of government may not adopt an ordinance that:

* * *

(d) Restricts operation of a snowmobile on the frozen surface of public waters or on lands owned by or under the control of the state except pursuant to section 82125.^[1]

¹ MCL 324.82125 is irrelevant to this case as it relates solely to operation of a snowmobile on the frozen surface of public waters.

The trial court found that MCL 324.82124 related solely to the actual physical operation of snowmobiles and had no effect on the designation of land for snowmobile use. This assertion is incorrect, however. Indeed, if the DNR is subjected to the permit requirements of the zoning ordinance, then plaintiff will have the power to deny that permit and effectively prohibit the operation of snowmobiles on this state-controlled land – a restriction that is expressly prohibited. See MCL 324.82124(1)(d); see also OAG, 1975-1976, No. 4,918, p 220 (December 19, 1975). Additionally, the trial court misread § 82124 as constituting a complete bar on township regulation of snowmobiles. Section 82124 does not completely bar township regulation of snowmobiles; it plainly allows local units of government to pass ordinances “regulating the operation of snowmobiles if the ordinance meets substantially the minimum requirements” of the act.² This evidences that the Legislature was aware of a local government’s potential interest in regulating snowmobiles within their territory. The language in subsection (d), however, indicates that at the same time that it was aware of the local government’s interest, the Legislature chose to preempt this power with regard to the designation of land for snowmobile use.

Moreover, in looking to other provisions of the act, we note the existence of MCL 324.82106(3), in which the Legislature expressly states that the money appropriated for snowmobile trails may be expended on development of those trails “on any land in the state.” The statute proceeds to set forth the limitations for development on *private* land and that expected snowfall and alternative off-season uses are to be considered when choosing the location of the trail. MCL 324.82106(3)-(5). We discern from this that the Legislature was mindful of the limitations affecting a decision to designate land for use as a trail. Nevertheless, nowhere does the statute indicate that that designation be subject in any way to local zoning ordinances. Under the doctrine of *expressio unius est exclusio alterius* – the expression of one thing suggests the exclusion of all others – by focusing its attention to limits on the DNR’s siting power and deciding on only specific limitations, the Legislature “must have considered the issue of limits and intended no other limitation.” *Pittsfield Twp, supra* at 711-712.

We further discern that the Legislature took into account that the purpose of the act is to implement “the overall plan of the department for an interconnecting network of statewide snowmobile trails,” MCL 324.82106(5), and chose to exempt state lands from regulations contrary to this purpose. If the department were subject “to the many and varied municipal zoning ordinances throughout the state,” the underlying policy of creating an interconnecting network of snowmobile trails “could be effectively thwarted by community after community prohibiting the placement” of snowmobile trails in appropriate locations. *Dearden, supra* at 266-267.

The Legislature, through the provisions set forth in the snowmobiles act, MCL 324.82101, *et seq.*, intended that the designation of land for snowmobile operation on state-owned or state-controlled lands should not be preempted by restrictions of a local unit of

² We express no opinion regarding when such regulation becomes a prohibited restriction on state land under MCL 324.82124(1)(d).

government, including township zoning ordinances. Therefore, the DNR has unrestricted authority to establish a snowmobile trail through the residential district of Chocolay Township. The trial court erred in granting a preliminary injunction to plaintiff.

Additionally, plaintiff argues that the Michigan trailways act, MCL 324.72101 *et seq.*, is the sole authority available to create snowmobile trails. Plaintiff's assertion is incorrect. The snowmobiles act is a comprehensive scheme created to regulate all aspects of snowmobile use, including the creation of trails. By creating a specific advisory committee and separate snowmobile trail improvement fund, MCL 324.82102a, we find that the Legislature intended to create a distinct body of law separate from the Michigan trailways act for the development of snowmobile trails.

Reversed. We do not retain jurisdiction.

/s/ Patrick M. Meter
/s/ Henry William Saad
/s/ Bill Schuette